

VELI DEMIREL

Petitioner

\* BEFORE THE ZONING BOARD  
\* OF HOWARD COUNTY

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Zoning Board Case No. 1098M

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### **DECISION AND ORDER**

On December 12, 2012, the Zoning Board of Howard County, Maryland ("Board") considered the petition of Veli Demirel ("Petitioner") to amend the Zoning Map of Howard County to reclassify from the R-20 (Residential: Single) District to the OT (Office Transition) District, a two-acre parcel of land located on the south side of Frederick Road approximately 200 feet west of the intersection with Centennial Lane, described as Tax Map 24, Grid 1, Parcels 62, 63 and 544, Lot, 112, 10105, 10109 and 10113 Frederick Road, in the Second Election District of Howard County (the "Property").<sup>1</sup> The Zoning Board also considered Petitioner's proposed Preliminary Development Plan ("PDP"), which Petitioner submitted to the Board in accordance with the requirements for petitions seeking rezoning to the OT District.

The notice of hearing was advertised, the Property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising, and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedure, all reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning ("DPZ"), and the Planning Board's Recommendation in this case, were entered or incorporated into the record of the hearing. Both DPZ and the Planning Board recommended approval of the petition.

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<sup>1</sup> The PDP represents an 0.08 area adjacent to the Property as a non-buildable parcel. The non-buildable parcel was not included in the petition and will remain R-20, consistent with Section 117.3.E. of the Regulations, which requires that "the gross area of an OT district shall be ... no more than two acres."

The Board conducted a hearing on December 10, 2012. Petitioner was represented by Sang Oh, Esquire. One unrepresented Protestant testified in opposition to the petition. After careful evaluation of the evidence, the Board makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. The R-20 zoned Property fronts to Frederick Road and is currently improved with three residences. The adjoining property to the east is zoned R-20 and is the site of La Petite Academy, a daycare facility, which was approved as a conditional use by the Howard County Board of Appeals on October 29, 1986 in Case No 86-014E. The adjoining properties to the west and south are zoned R-20 and are residentially developed. The properties across Frederick Road to the north of the Property are zoned B-2 and include (a) a pharmacy; (b) Centennial Place, a commercial development that includes a bank and retail building; (c) High's Dairy Store; and (d) a gasoline station.

2. Petitioner submitted one previous request for rezoning to the OT District, which was denied by the Zoning Board on September 13, 2010 in ZB 1077M. In that case, Petitioner submitted a proposed PDP depicting two, two-story office buildings with no residential units.

3. Because the OT District is a floating zone, Petitioner presented testimony and evidence relating to the criteria in Section 117.3.G of the Howard County Zoning Regulations, rather than to the change-mistake rule applicable to Euclidean rezoning cases. As required by the OT District requirements, Petitioner submitted a PDP showing proposed development of the Property, specifically five two-story buildings, each approximately 5,000 square feet and containing two commercial office units on the first floor and two apartment dwellings on the

second floor. In accordance with Section 100.G.2.d. of the Zoning Regulations, Petitioner presented testimony and evidence relating to the standards for approval of documented site plans.

4. Registered civil engineer Robert Vogel, 8407 Main Street, Ellicott City, 21043, prepared the PDP on behalf of Petitioner. Mr. Vogel testified that he agrees with the conclusion of DPZ in its Technical Staff Report that the petition for rezoning to the OT District and the PDP satisfy all of the requirements of the Zoning Regulations. Mr. Vogel testified that Type C buffering will be provided along the boundaries of the Property adjacent to the neighboring residences and will supplement the existing evergreen screen that already exists on the southern border of the Property. Parking will be oriented toward Frederick Road and will be sufficient for both the office and residential uses. According to Mr. Vogel, Petitioner incorporated the recommendations of the Design Advisory Panel into the PDP, including staggering the buildings, provision of an amenity area (a brick paver patio with seating and landscaping), and greater pedestrian connectivity. A bike rack and sidewalks along Frederick Road as well as within the interior of the Property will be provided. Mr. Vogel testified that there will not be a dumpster on the Property and that trash and recycling collection will be through roll-out containers. Mr. Vogel stressed that, by incorporating both residential and office uses, the proposed development is compatible with both the B-2 properties to the north and the residentially zoned properties to the west and south and satisfies the transitioning purpose of the OT District.

5. James Wright, 10313 Globe Court, Ellicott City, Maryland, a nearby resident, testified in opposition to the proposed rezoning. Mr. Wright did not specifically address any of the factors set forth in the Zoning Regulations, but asked about the quality of building materials and the impact of the development on groundwater retention in his neighborhood.



6. In order to grant the requested rezoning, the Board must find that all of the requirements set forth in Section 117.3.G. of the Zoning Regulations have been satisfied. Based on the petition, the Technical Staff Report of DPZ, and testimony provided at the hearing, the Board finds as follows with respect to each of regulatory criteria:

a. 117.3.G.1. The district will accomplish the purposes of the OT District.

The purposes of the OT District are detailed in Section 117.3.A. of the Zoning Regulations; they include (1) “allow[ing] low-impact office uses adjacent to areas of residential zoning” and (2) “provid[ing] a transition along the edges of residential areas impacted by nearby retail/employment areas or arterial highways carrying high volumes of traffic.” Section 117.3.A. further provides that “[t]he standards of this district should result in small-scale office buildings on attractively-designed sites that are compatible with neighboring residential uses.” The Property is situated between residential and institutional uses along Frederick Road, as well as residential uses to the south and commercial uses to the north across Frederick Road. The buildings will face the commercial uses across Frederick Road and will be of appropriate height and scale for compatibility with adjacent residential buildings. Moreover, Mr. Vogel testified and the Board agrees that, by incorporating both office and residential uses, the proposed development will be compatible with neighboring residential uses.

b. 117.3.G.2. The site meets the requirement of Section 127.1.B.

Section 127.1.B. of the Regulations requires that the site have frontage on and direct access to an arterial road and be directly across a public street from a nonresidential zoning district that is zoned for commercial or employment uses, but not another OT district. The Property has frontage on and direct access to Frederick Road, a

Minor Arterial, and is directly across from a non-residential zoning district that is zoned and used for commercial/retail uses.

- c. 117.3.G.3. Adequate sight distance and safe access can be provided at proposed points of access to the site.

The PDP includes a sight distance analysis representing adequate sight distance and safe access at the proposed driveway. According to the Technical Staff Report of DPZ, precise sight distance measurements and access will be more accurately evaluated at the site development plan stage.

- d. 117.3.G.4. The site layout and landscaping will buffer neighboring residences from business uses.

Based upon the testimony of Mr. Vogel and the representations set forth in the PDP and petition, the Board concludes that the orientation of the buildings toward Frederick Road and away from neighboring residences, along with tree plantings along the residential boundaries of the Property, will buffer neighboring residences from business uses on the Property.

- e. 117.3.G.5. Parking areas and driveways are oriented towards neighboring non-residential land uses and screened from residential uses.

As indicated by DPZ in its Technical Staff Report, the proposed driveway and parking areas are oriented toward Frederick Road and as far from neighboring residential land uses to the rear as possible. Screening of the parking lot will be provided in accordance with the requirements of the Landscape Manual.

- f. 117.3.G.6. No more than 50 percent of the site may be covered with impervious surfaces.

The petition notes that the impervious surface area of the site is 41 percent.

- g. The design of the new structures or additions to existing structures will be generally compatible in scale and character with residential structures in the vicinity. Generally, no building should be larger than 5,000 square feet of gross floor area, although the zoning board may allow larger buildings if it finds that the design is such that the building will be compatible with the general character of the neighboring residential structures.

As required by this Section, the proposed buildings are no larger than 5,000 square feet. Although larger than the single family residences to the south, the development will provide a transition between those residences and the much larger commercial structures across Frederick Road. The architectural drawings provided with the petition indicate that stone and brick exteriors will be utilized, similar to the exteriors of residential structures in the vicinity.

- h. The hours of operation and site lighting will not adversely impact the adjoining residential neighborhood.

The proposed hours of operation are 6:00 a.m. until 10:00 p.m. on weekdays and 7:00 a.m. until 6:00 p.m. on weekends. Exterior lighting will not exceed 14 feet in height and will be shielded and directed down and away from adjoining residential properties. The Board concludes that hours and site lighting will not adversely impact neighboring residential properties.

7. In reviewing the proposed PDP, the Board must consider the following factors set forth in Section 100.G.2.d. of the Zoning Regulations: (a) the compatibility of the proposed development with the existing and potential land uses of the surrounding areas; (b) protection of the environmental integrity of the subject property and adjoining areas in the location and design of the site improvements; (c) the availability of safe road access for the proposed development; and (d) compatibility of the proposed development with the policies and objectives of the Howard County General Plan. Based on the petition, the Technical Staff Report of DPZ, and



testimony provided by Mr. Vogel at the hearing, the Board finds that the proposed PDP satisfies all of these factors. As noted above, by incorporating both office and residential uses, the proposed development is compatible with the commercial uses across Frederick Road and the residential uses to the west and south of the Property. The environmental integrity of the Property and adjoining areas has been protected through the retention and addition of vegetative buffers as noted in the PDP. Safe road access is available to serve the proposed development. Finally, by incorporating office and residential uses, pedestrian friendly features, and brick and stone facades, the proposed development is compatible with and serves PlanHoward 2030 Policy 10.6, which is to improve the competitiveness and design of commercial areas.

#### CONCLUSIONS OF LAW

1. Based on the above, Petitioner has presented sufficient evidence for the Board to conclude that all of the factors set forth in Section 117.3.G. of the Zoning Regulations have been satisfied and the Property may be rezoned to the OT District.


3. The Board further concludes that the Property should be rezoned OT, given Petitioner's satisfaction of the required regulatory factors and the proposed development's compatibility with neighboring residential and commercial uses. By incorporating residential and office uses, sufficient landscaping and buffering, pedestrian friendly features, and an amenity area, the proposed development will provide a transition between commercial uses to the north and residential uses to the south and thereby meet the purposes of the OT District.

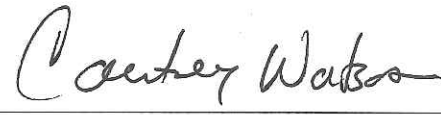
4. The Board concludes that the PDP submitted by Petitioner satisfies all of the criteria set forth in Section 100G.2.d. of the Zoning Regulations for the reasons stated above.

For the foregoing reasons, the Zoning Board of Howard County, on this 6<sup>th</sup> day of February, 2013, hereby GRANTS Petitioner's request for rezoning of the Property from the R-20 to OT District and GRANTS approval of the PDP.

ATTEST:

ZONING BOARD OF HOWARD COUNTY

  
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Robin Regner  
Administrative Assistant

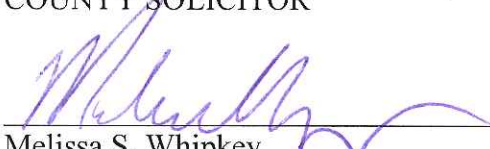
  
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Courtney Watson, Chairperson

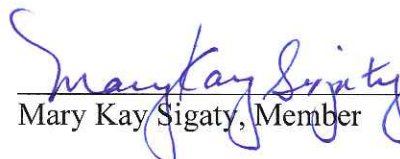
PREPARED BY HOWARD COUNTY  
OFFICE OF LAW

  
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